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THIRTY-FOURTH ANNUAL REPORT

OF THE

COMMISSIONERS

FOR THE

Queen Victoria Niagara Falls
Park

1919

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THE LEGISLATIVE ASSEMBLY OF ONTARIO



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1920

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COMMISSIONERS FOR THE QUEEN VICTORIA NIAGARA
FALLS PARK

P. W. ELLIS, Chairman, Toronto.

GEORGE H. WILKES, Brantford.

COLONEL L. CLARKE RAYMOND, K.C., Welland.

LIONEL H. CLARKE, Toronto.

WILLIAM L. DORAN, Niagara Falls.

JAMES D. CHAPLIN, St. Catharines.

DR. H. Y. GRANT, Niagara Falls.

SUPERINTENDENT.

JOHN H. JACKSON, A.M.E.I.C.; O.L.S.

PARLIAMENT BUILDINGS,

TORONTO, MAY 14, 1920.

To His Honour LIONEL H. CLARKE,

Lieutenant-Governor of the Province of Ontario.

MAY IT PLEASE YOUR HONOUR:

I beg to forward herewith the Thirty-fourth Annual Report of the Queen Victoria Niagara Falls Park Commission, 1919.

I have the honour to be,

Your Honour's most obedient servant,

H. C. NIXON,

Provincial Secretary.



TORONTO. ONTARIO,

MAY 12, 1920.

*To the Honourable H. C. NIXON, M.P.P., Provincial Secretary, Province of Ontario,
Parliament Buildings, Toronto.*

SIR,—I have the honour to transmit herewith for presentation to the Legislature of Ontario the Thirty-fourth Annual Report of the Commissioners for the Queen Victoria Niagara Falls Park (being for the year 1919), together with the statements of receipts and expenditures, and other documents connected with the Report.

I have the honour to be, Sir,

Your obedient servant,

P. W. ELLIS,

Chairman.



Horseshoe Falls—Night Illumination.

THIRTY-FOURTH ANNUAL REPORT

OF THE

Commissioners for the Queen Victoria Niagara Falls Park

To His Honour LIONEL H. CLARKE,

Lieutenant-Governor of the Province of Ontario.

MAY IT PLEASE YOUR HONOUR:

The Commissioners for the Queen Victoria Niagara Falls Park System submit herewith for the information of the Legislature, as required by Statute, the Thirty-fourth Annual Report, covering the administration of the system of parks and boulevards along the Niagara frontier for the fiscal year ending December 31st, 1919.

WATER DIVERSION.

Several times in recent years the Commissioners have made reference to the diversion of water for hydro-electric development. When the armistice was signed in November, 1918, there commenced an adjusting period due to munition manufacturers gradually releasing power used for making the various supplies consumed in the devastation of war. The ordinary commercial shortage had become so great, due to curtailment for war needs, that little difficulty was experienced by power companies in diverting the munition load to the arts of peace, and the end of 1919 finds a demand from municipalities and manufacturers that cannot at present be supplied. The Ontario Power Company has added some 40,000 h.p. to the capacity of its generating station without materially relieving the situation. About 9,000 h.p. exported to the United States had been released for Ontario use by the Canadian Niagara Power Company, due to the allied company, the Niagara Falls Power Company, installing additional capacity at its plant at Niagara Falls, New York. The Electrical Development Company is under injunction by order of the Supreme Court of Ontario to maintain its generation within 125,000 h.p., while its capacity is 150,000 h.p., which was generated during war time under the Federal Power Controller's orders. Thus the total quantity of power on the Canadian side at Niagara Falls has been increased by the net amount of 24,000 h.p., all of which is being used, and still restrictions are placed upon municipal use to keep within the total supply.

Under the treaty of 1910 between Great Britain and United States, Canada is allotted a daily diversion at the rate of 36,000 cubic feet of water per second for power purposes, and is probably using within 5,000 cubic feet per second of the total to generate about 425,000 h.p. The authorized diversion upon the New York State side of the Niagara River under the treaty is a daily diversion of 20,000 cubic feet of water per second, but for a number of years the quantity was limited

to 15,600 cubic feet of water per second by the United States War Department. Now, however, arrangements have been completed for the use of the additional 4,400 cubic feet per second, bringing the water used up to the total permitted.

The thirteen mile canal under construction by the Hydro-Electric Power Commission of Ontario, from Chippawa for the new power station at Queenston will use 15,000 cubic feet of water per second for 450,000 h.p., which can be supplied in part from the 5,000 cubic feet still unused by Canada and supplemented by water now used by the Ontario Power Company, which is controlled by the Power Commission. There would be the advantage obtained from using the Ontario Power Company water at 300 feet head instead of about 180 feet, as is now the case. Against this advantage must be charged the interest upon idle capital in the portion of the plant of the Ontario Power Company out of commission. Altogether, therefore, the time is evidently approaching when serious thought must be given to increasing the diversion at Niagara Falls for power use.

About five per cent. of the total flow of the Niagara River is discharged by the American Falls, which extends over a length of 1,000 feet. Ninety-five per cent. of the water in the river, therefore, or nineteen times the quantity at the American Falls, finds its way to the lower gorge by way of the Horseshoe Falls, which has a length of 3,000 feet. By far the major volume of the water at the Horseshoe is confined, by the contour of the bed of the upper rapids to the centre leaving the two extremities barely covered except at very high stages of the great lakes levels. The unbalanced flow at the Horseshoe accounts for the increased wear at mid-stream, averaging it is estimated not less than five feet per annum, while the contour at the Canadian and American shores remains practically constant similar to the edge of the rock at the American Falls.

Evidently then it is desirable to arrest the wear at the point of greatest destruction to the wonderful cataract for scenic reasons, apart from any other considerations, and the diversion of the main stream at the "apex" to uniformly cover the whole length from Goat Island to the Canadian shore, is a condition that would preserve the Horseshoe Falls from the irregular erosion that is responsible for the changing crest line. It is doubtless possible in controlling the waters flowing from the upper river to the gorge to release an additional quantity of water for the generation of power without materially affecting the views seen by the million of tourists annually coming to Niagara Falls for pleasure.

CANADIAN NIAGARA POWER COMPANY.

A quantity of loose rock excavated from the bottom of the river in the work of building the new ice shield to the entrance of the forebay of the Canadian Niagara Power Company was allowed to remain until May 1st, 1919, upon the representation by the company that it would be of great assistance in securing data for the design of a submerged weir, provided for under the agreement dated November 21st, 1912. The winter of 1918-19 was, however, most remarkable at Niagara Falls, as well as throughout the country, in that practically no ice was formed and no difficulties occurred with power plant operation. It was indeed quite the reverse of the preceding winter, which was one of the most severe upon record. Little opportunity, therefore, was afforded to obtain the information from the material in the river, and the company again sought permission to allow it to remain for another year. Leave was granted by the Commissioners for the company to maintain it until May 1st, 1920.

The Commissioners were notified by the Canadian Niagara Power Company of the proposed installation of an additional Unit No. 11, and thereupon again drew the attention of the company to the ultimate capacity of 100,000 electrical horse-power provided for in the specifications referred to in the agreement with the Commissioners, dated 15th July, 1899. The company has already generated beyond this ultimate capacity, and maintains its right so to do, as outlined in the following correspondence:

TORONTO, November 5, 1913.

A. MONRO GRIER, Esq., K.C., Vice-President and Secretary, Canadian Niagara Power Company, Niagara Falls, Ontario.

DEAR SIR,—In view of certain matters which have recently been submitted to the Queen Victoria Niagara Falls Park Commissioners, relative to the use of Niagara River waters for power purposes, it has been found necessary to fix, in the case of each of the Power Companies now operating within the limits of the Park, a specific portion of the total volume which is available for diversion in Ontario under Article V of the Boundary Waters Treaty between Great Britain and the United States.

This matter has received careful consideration, and in the case of your Company it has been determined that, for the time being, a continuous uniform diversion of 7,940 cubic feet per second of diverted water shall be deemed sufficient for the efficient and proper development of 100,000 electrical horse-power by your Company.

Representatives of your Company will be given an opportunity to be heard with regard to the measurement of the water above referred to in the Board Room of the Toronto General Trusts Corporation on Monday the 10th instant at 11 a.m.

Your truly,

J. W. LANGMUIR,
Chairman.

CANADIAN NIAGARA POWER COMPANY.

NIAGARA FALLS, CANADA, November 10th, 1913.

J. W. LANGMUIR, Esq., Chairman, Queen Victoria Niagara Falls Park Commissioners, Toronto.

DEAR SIR,—In reply to your letter of 5th instant, it appears to us that we should set forth explicitly our position with reference to the points covered by it, and, in doing so, we must ask for all the indulgence due to a communication formulated hurriedly.

1. In the first place we again record the position which we have consistently maintained as to our rights, namely, that they are not limited to the development of 100,000 h.p., but are as set forth in paragraph 1 of the Agreement of April 7th, 1892, namely:

For the purpose of generating electricity and pneumatic power to be transmitted to places beyond the park, the Commissioners hereby grant to the company a license irrevocable save as hereinafter limited, to take water from the Niagara River, between the head of Cedar Island and the main land south thereof, and lead such water, by means of the natural channel between Cedar Island and the main land and the further extension of the channel, to supply works to be erected and constructed by the company in buildings and power houses on the main land within the park on a location near the foot of the high bluff, between the Carmelite Monastery and the rear of the Table Rock House, which location shall occupy a tract of land of not more than 1,200 feet in length by not more than 100 feet in width, such location of buildings and power houses from time to time to be erected as shall be hereafter settled within the aforesaid limits by the commissioners.

2. That the approval of plans whether on July 15th, 1899, or subsequently thereto, did not limit or exhaust our rights under the said original agreement of April 7th, 1892, but was merely an approval of the development of the Company proposed at the date of the particular approval; a position which the Company made clear beyond doubt, several years ago, by filing plans of a further proposed development to the south of the development covered by its Power House then under construction and now completed.

3. That, quite apart from the question of any extension to the present Power House or of the erection of another Power House, the Company's rights at the very least cover any development possible within the area included in any approval heretofore given.

4. That, viewing the matter as between the Commissioners and this Company alone, the rights of the Company in respect of any actual or potential development are not subject to be limited or curtailed by any refusal or neglect by the Commissioners to furnish water for any such development.

5. That, if by reason of any contract entered into between the Commissioners and any other Company or Companies, subsequently to April 7th, 1892, the date of this Company's Agreement, the supply of water should prove to be insufficient for the purposes of all concerned, the rights and facilities of this Company are not to be prejudiced by any such subsequent bargain, but that, on the contrary the rights of this Company are paramount at law and in equity just as they are morally.

6. That as to the development as now existing, and also as and when added to or completed, within the present Power House, this Company has the absolute legal right to the amount of water necessary for the effective operation of such development.

7. Without prejudice to our position in this, or any other, particular in this present letter, that for the purposes of a development of 100,000 horse power, the number of cubic feet per second named in your said letter, namely, 7,940 cubic feet, is less than that indicated for this Company for such purposes by the Park Commissioners or by any other body which has dealt with the subject, and is, in fact, insufficient.

Your very truly,

CANADIAN NIAGARA POWER COMPANY,

by A. MONRO GRIER,
Vice-President and Secretary.

Before assenting to the installation of the additional unit No. 11, a distinct understanding in writing was required to the effect that such approval should not be made the basis of any claim that the company was entitled to develop in excess of 100,000 electrical horse-power. The correspondence in connection with this matter is set forth as follows:

CANADIAN NIAGARA POWER COMPANY.

NIAGARA FALLS, CANADA, June 3rd, 1919.

JOHN H. JACKSON, Esq., Superintendent, Queen Victoria Niagara Falls Park, Niagara Falls, Ontario.

DEAR MR. JACKSON.—In connection with our proposed installation of Unit No. 11, I find that it is not necessary to send you a plan of temporary structures, as was done in the case of Units 8, 9, and 10, as the structures then erected are still available if and as required.

Perhaps you already are aware that we have shut down Unit No. 10 for the purpose of overhauling it. In the same way it is proposed to shut down one Unit after another until all of them have been overhauled. In view of this circumstance, as well as of the fact that constantly we have been at the risk of having one or more Units put out of commission, you will be pleased to hear, as I am to tell you, that our thought is to finish the installation of the eleventh Unit at the earliest possible moment. In style and capacity it will be similar to the Units mentioned above, so that when it is installed we hope to have a "spare" of a capacity sufficient to allow of the repair or maintenance of the present units without interruption of power production.

Yours very truly,

A. MONRO GRIER,
President.



Cliff Walk—Niagara Glen.

NIAGARA FALLS, ONTARIO, July 2, 1919.

DEAR SIR,—In reply to your letter of June 3rd last, it is to be inferred that this Unit No. 11 is simply an insurance against any break down or injury that may happen to any of the other units or while some one or other of the present units is shut down for repair.

You are aware of the position taken by the Commissioners that the Canadian Niagara Power Company has not the right to develop at any one time in excess of 100,000 horse-power. The Commissioners will not give their consent to the installation of any units or any other development which might be construed by you as a consent to develop at your works any power at any time in excess of this limit.

Before the Commissioners approve of the installation or the plans of the structures for this unit No. 11, they will require from you a distinct understanding in writing that such approval shall under no circumstances be used as the foundation of any claim on your part that you are entitled to develop in excess of the above-mentioned limit.

Will you please let me have an answer to this at your earliest convenience so that I may lay the matter before the next meeting of the Commissioners.

Your very truly,

JOHN H. JACKSON,
Superintendent.

A. MONRO GRIER, Esq.,
President, Canadian Niagara Power Company, Niagara Falls, Ontario.

CANADIAN NIAGARA POWER COMPANY.

NIAGARA FALLS, CANADA, July 25, 1919.

JOHN H. JACKSON, Esq., Superintendent, Queen Victoria Niagara Falls Park, Niagara Falls, Ontario.

DEAR SIR,—Replying to your letter of July 2nd, the proposed installation, the purpose of which is correctly inferred in your letter, is absolutely without prejudice to our respective positions as to the Company's right to develop (for our position see our letter of November 10, 1913) and we hereby give the distinct understanding in writing required by the Commissioners, namely: That the approval of Unit No. 11 shall under no circumstances be used as the foundation of any claim on our part that we are entitled to develop in excess of the limit set forth in your letter of July 2nd, 1919.

Yours very truly,

A. MONRO GRIER,
President.

The limit of 100,000 electrical horse-power was exceeded by the Canadian Niagara Power Company during the year ending October 31st, 1919, but no rental was accepted by the Commissioners for the quantity in excess of 100,000 horse-power. The peak load for the half year ending April 30th, 1919, was 104,959 horse-power, and for the half year ending October 31st, 1919, 103,220 horse-power.

ONTARIO POWER COMPANY.

The construction of the third pipe line, a wooden conduit thirteen and one-half (13½) feet in diameter, was proceeded with throughout the year and practically finished in the late fall. It provides water for some increased capacity in the units already installed in the power house, and in addition thereto supplies two new units, giving an added capacity to the station of about 40,000 horse-

power. The backfilling and restoration over the pipe line has been completed at the southerly end from the forebay to the Park Greenhouses, and at the northerly end from Table Rock House to the surge tank at the end of the conduit. The remaining length about forty-five hundred (4,500) feet is left in open cut with the sides trimmed to a uniform slope. The surplus material from the open cut is deposited in the Park upon certain areas approved by the Commissioners, as provided for in the agreement of March 1st, 1918.

The Ontario Power Company in order to raise the water level in the forebay at Dufferin Islands placed wooden flashboards on the crest of the overflow without obtaining the approval of the Commissioners to the construction. The Commissioners declined to approve of the method used, and insisted upon a permanent structure being built. The company is now preparing plans for a concrete top to accord with the Commissioners' requirements.

During the construction of No. 3 conduit motor trucks were largely used for the transport of materials where the tracks of the International Railway Company had heretofore served the same purpose. Large quantities of gravel were brought from the upper Niagara River to Chippawa, and hauled thence over Park roads to various points on the works. The action resulted in great damage to the Park roads, which were not built for traffic of such a character, and after complaint by the Commissioners the company agreed to be responsible for the damage beyond ordinary wear and tear. After the work was completed an agreement was reached covering the amount due to the Commissioners, and the sum was paid by the Power Company.

To cover the two additional Units Nos. 15 and 16 supplied from conduit No. 3, an extension to the power house in the gorge was necessary. The construction was made to correspond with the earlier portion of the building, while the main floor was lowered ten (10) feet to take advantage of additional head in low water stages of the river.

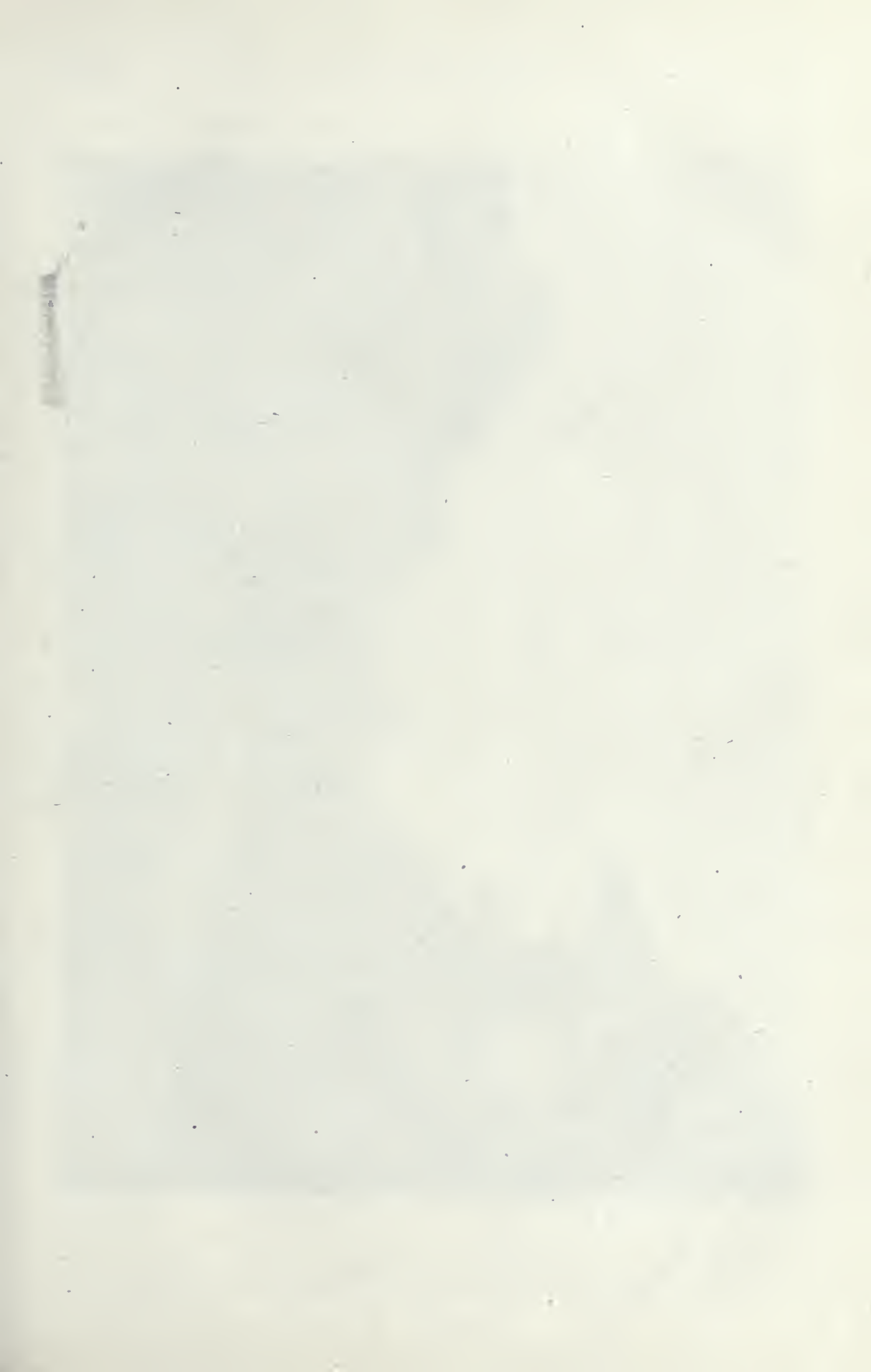
The fixed and additional rentals not paid by the Ontario Power Company for the half year ending September 30th, 1918, were paid by the company in April, 1919, upon the average generation of power, and the amount was received upon account of the rentals due as heretofore, without prejudice to either the rights of the Commissioners or the company.

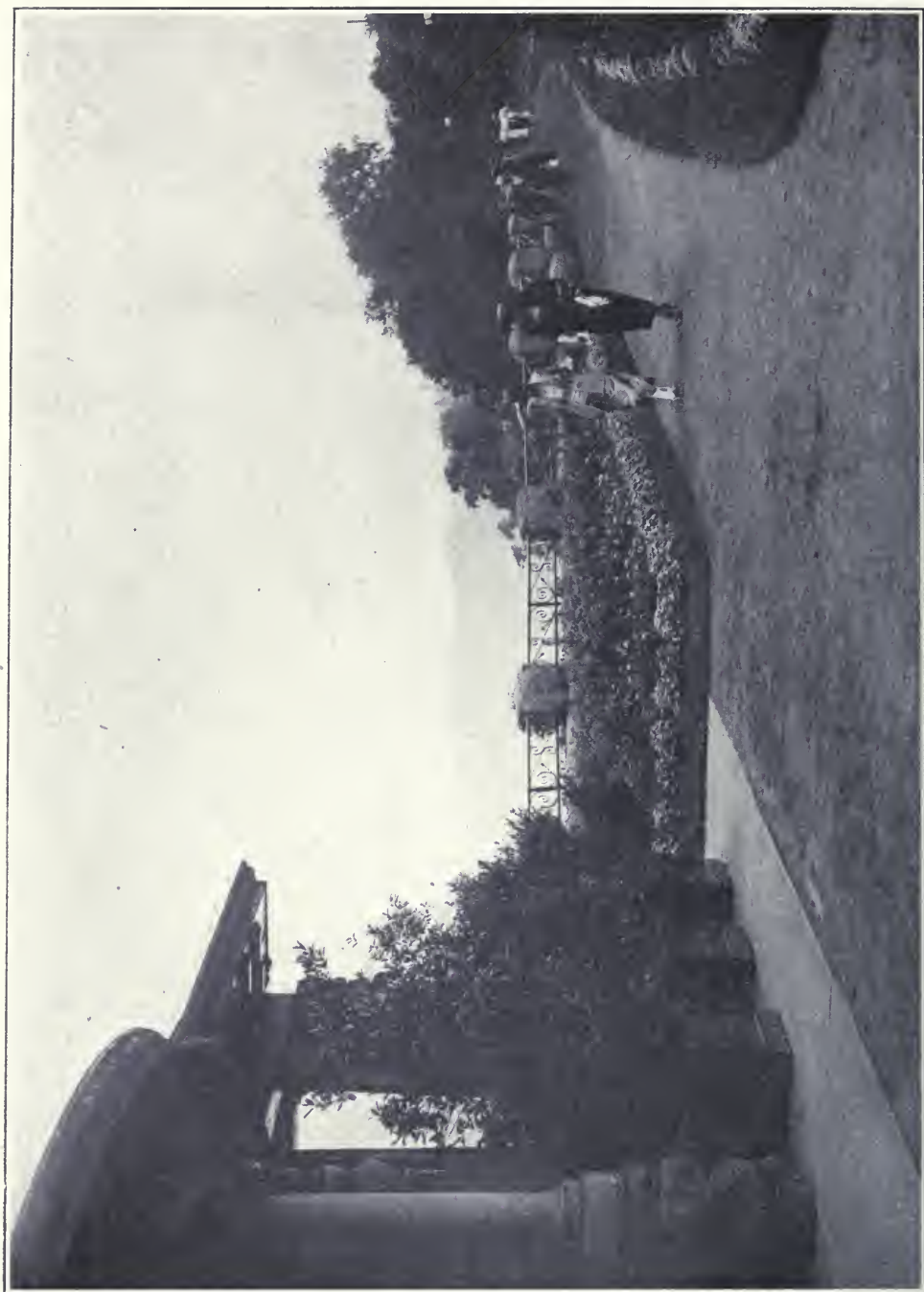
In the first construction of the Ontario Power Company, the penstock tunnels leading from the main conduit to the water wheels were erected in vertical shafts and taken through horizontal tunnels below the power house floor. In the length of shaft running through shale, the penstocks were concreted in completely, but the tunnel portion and the upper portion of the shaft were left open. The company sought permission to concrete in the remainder of the shafts and the length of tunnel for the first units to provide against the rusting of the steel. This work was approved of by the Commissioners.

ELECTRICAL DEVELOPMENT COMPANY.

The case of the Park Commissioners versus the Electrical Development Company referred to in the Thirty-third Annual Report was tried in October, 1918, and a decision by Mr. Justice Middleton was delivered February 28th, 1919.

The Park Commissioners claimed arrears of rental beyond the amounts admitted and paid by the company, and sought damages for the taking of more water than is authorized in the agreement of 29th January, 1903, together with





Main Path, Queen Victoria Park.

an injunction restraining the defendants from taking water in excess of the grant. It was further contended by the Commissioners that the agreement between the Electrical Development Company and the Toronto Power Company authorizing the latter corporation to operate the generating plant of the Electrical Development Company was in violation of clause 25 of the agreement, providing that the original syndicate should not amalgamate with any other company or enter into any arrangement or agreement which might directly or indirectly have that effect. In addition to disputing the above claims of the Park Commissioners the Electrical Development Company sought a declaration that its power plant as constructed is in accordance with its rights under the agreement. The judgment of the court completely sustained the Commissioners in the method of calculating the additional rentals and the limitation of the grant to 125,000 electrical horse-power measured on peak and enjoined the company from developing beyond that amount. It was held, however, that the energy used by the company itself in the manufacture of saleable electricity should be excluded from the limitation of 125,000 electrical horse-power. This has the effect of giving to the company without rental payment the service power and transformer losses upon energy transmitted over high tension lines. An injunction was granted limiting the generation to 125,000 horse-power for commercial use. That the Electrical Development Company had amalgamated with the Toronto Power Company was not sustained, and the court refused to pronounce any opinion upon the efficiency or sufficiency of the generating station. The full text of the opinion will be found in the appendix.

The Electrical Development Company continued to generate beyond the limits of its agreement with the Park Commissioners, but under the Federal Power Controller's order until March 1st, 1919, when it was released from Power Controller's jurisdiction. To obtain compensation for the excess power thus developed the Commissioners have filed a petition of right against the Dominion Government, and this action will come to trial in the Exchequer Court early in the year 1920.

HYDRO-ELECTRIC POWER COMMISSION.

For the Chippawa-Queenston scheme of hydro-electric power development, the Hydro-Electric Power Commission of Ontario will use the Chippawa Creek or Welland River for a distance of four miles from its junction with the Niagara River, dredging it to a uniform section of larger dimensions than the present channel. The current will, therefore, be reversed to the point where the hydro canal proper leaves the Welland River in a northerly direction toward the power house site. The bridges across the Welland River will require to be entirely reconstructed upon new foundations, and among them is included the highway bridge in the Village of Chippawa on the route of the Niagara River Boulevard. This bridge has always been too narrow for the traffic, and particularly so since the boulevard was constructed. The Hydro-Electric Power Commission proposed to renew the structure, giving it a slightly increased width, but not sufficient in the opinion of the Park Commissioners to provide for the ever increasing volume of traffic. Therefore, negotiations were entered into with the Power Commission for the purpose of securing a bridge of at least twenty-four (24) feet in width, with sidewalks additional. In the first instance, it was thought that the Dominion Government might assume some part of the cost of the added dimensions owing to the Welland River being part of the Welland Canal System,

but no success attended the efforts to make the Federal authorities parties to the extra cost. It was finally arranged that the Park Commissioners contribute \$15,000 to secure the width of bridge required, and the Hydro-Electric Power Commission will build it. The maintenance will be undertaken by the Dominion Government.

The Power Commission desired to make further experiments in connection with the intake to the new canal at the mouth of the Welland River, and for that purpose again secured the Dufferin Island channel to conduct the work in. The arrangement prevented the use of the swimming pool during the summer months, and detracted materially from the appearance of this beautiful spot.

For the purpose of giving access to the generating station, and the bringing in of material and heavy machinery, the Park Commissioners sanctioned a railway connection through the lower gorge to and beyond the Village of Queenston connecting with the Michigan Central Railway. The connection has now been placed, and as intimated in the Thirty-third Annual Report, a large amount of destruction has taken place among the natural trees which lined the sloping talus ascending from the water's edge. In conjunction with the railway construction an improvement has been arranged in the tracks of the International Railway Company. Instead of winding down the slope the tracks will now extend northerly on Queen Street and reach the lower level through Vrooman's Ravine. For construction purposes a temporary transmission line has been erected from the site of the generating station at Smeaton's Ravine along the top of the cliff to a point in the vicinity of Queenston Heights Park where it descends to the railway right-of-way. The poles have been kept as far as possible from interfering with the public view, particularly at Brock's Monument entrance.

Upon the upper level above the generating station the tracks of the International Railway Company will be re-located to parallel the front of the screen house. Considerable damage has been done to the roadbed at this point, and the Commissioners have insisted upon temporary protection for the safety of electric cars carrying tourists.

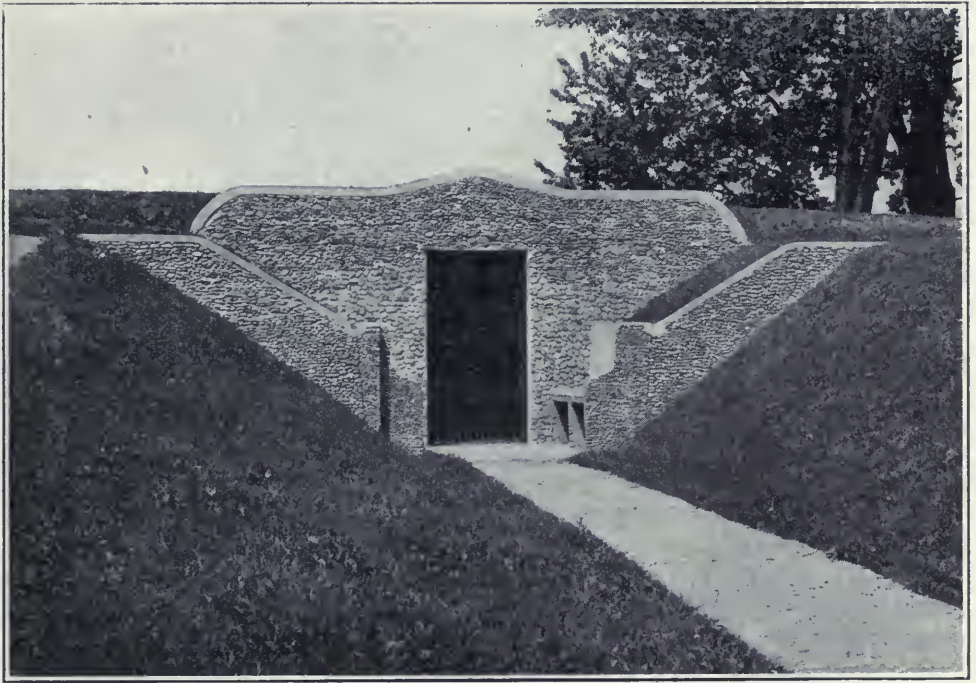
INTERNATIONAL RAILWAY COMPANY.

The International Railway Company has made application to the Ontario Railway and Municipal Board for an increased scale of passenger fares over the Park and River division running from Queenston to Chippawa. On account of the agreement with the Park Commissioners for the construction of the electric railway and lands vested in the Commissioners, it is necessary to have the joint approval of the Park Board and the Railway Board. A number of suggestions have been made and new schedules prepared, but no agreement has yet been reached between all parties.

The Commissioners called the attention of the Board of Railway Commissioners for Canada to the Upper Steel Arch Bridge carrying traffic between Niagara Falls, Ontario, and Niagara Falls, New York, and requested an examination of the structure to settle rumors of its unsafe condition. A complete inspection was made, and the International Railway Company had an independent examination and repairs made where necessary, including painting. No foundation for the rumors of the structure being unsafe for traffic was found, and such slight deterioration as had taken place was completely repaired.

EXTENSION OF PARK LANDS.

It has been the intention of the Commissioners for some years to extend the Park proper between Niagara Falls and Queenston, building a roadway adjacent, at points to the edge of the cliff, to provide a more direct route to Queenston Heights Park. The new route would also connect with the Provincial Highway running to St. Davids, and thence to St. Catharines, and give a roadway of easier grades than that now used through the St. Davids ravine. Negotiations have taken place with the Hydro-Electric Power Commission to secure lands purchased in connection with the Chippawa-Queenston Hydro-Electric scheme, but not required for the power development. Some three hundred and twenty (320)



The Claus Burial Vault, Butler's Burying Ground.

acres were purchased from the Power Commission and the development of the property is now being studied.

The Commissioners have been urged upon many occasions to extend the boulevard scheme of the Park to Niagara-on-the-Lake, and public bodies during the year again requested that the work should be undertaken, pointing out the great necessity for it and the development of tourist traffic that would result. Having purchased land to proceed as far as Queenston, the Commissioners could not undertake at once the development to Niagara, but are obtaining information and preparing preliminary plans for the ultimate development.

The restoration of Butler's Burying Ground adjoining the Town of Niagara was undertaken during the summer and carried along almost to completion. The old vault on the property was rebuilt and a new entrance constructed, while the old monuments, many of them broken, have been gathered together for the purpose

of permanent preservation. The roadway to the property is being improved and planting will be carried on in the spring to make this out of the way spot one of considerable beauty.

The River Road in the City of Niagara Falls from the Park proper to the northerly city limits is vested in the Park Commissioners, and the maintenance is provided by the municipality and the Park Commissioners, each paying one-half of the total cost. For many years the roadbed has been an eyesore owing to the lack of a permanent pavement. In 1919 in conjunction with the city, the whole of the roadway was paved with an asphaltic construction according to the Willite process.

The Park Commissioners have made application to the Ottawa authorities for a proper share of war trophies from the great war when these are being divided, and they have the assurance that full consideration will be given to their request when the trophies are allotted.

A number of notable persons visited Niagara Falls during the year, and the Commissioners were able to extend facilities in their entertainment. His Royal Highness the Prince of Wales was the guest of the Commissioners from October 18th to October 20th, an extensive programme having been prepared for his enjoyment. The Horseshoe Falls was illuminated for the first time on the night of October 18th. The popularity of the heir apparent to the throne of Britain was evidenced at Niagara Falls as elsewhere by the tremendous crowds of cheering people who came to see him at every opportunity.

The President Elect of Brazil, Senor R. Pessoa, visited the Falls on June 27th as the guest of the Dominion Government, the Commissioners sharing in his entertainment.

The King and Queen of the Belgians visited Niagara Falls on October 6th, and were met by representatives of the Dominion Government who escorted them through Queen Victoria Park to the Horseshoe Falls. Owing to press of time only a brief half hour was allotted to the visit in Canada.

Cardinal Mercier, of Belgium, passed through Niagara Falls on October 15th, but did not remain over.

The Commissioners have to acknowledge with pleasure the gift of two coloured engravings of Niagara Falls presented by Mr. C. S. Gzowski, of Toronto, in memory of his father, Sir Casimir Gzowski, who was the first Chairman of the Park Commissioners. To the foresight and business ability of Sir Casimir is due much of the laying of the foundations of the Park System, which has in latter years grown to be of international importance.

FINANCIAL.

The accompanying financial statement fully details the receipts from all sources, and shows the expenditures made on both capital and maintenance accounts. There was a balance of \$135,838.24 from the year 1918, and to this must be added \$395,030.20, making a total of \$530,868.48. From the Ontario Power Company there are payments of \$15,000 for fixed rental and \$35,822.75 upon account of additional rentals which were due in 1918, but not paid until 1919. The Electrical Development Company tendered a cheque for \$32,500 for additional rental in 1918, but it was held under advice and not deposited in the bank until 1919. The arrears of rentals owing from the International Railway Company for 1918 are included in the receipts for 1919.

The restaurant at the Administration Building had a very successful season; the total receipts amounting to \$27,935.60, with expenditures of \$22,768.94. The four years of operation under the Park Commissioners' management has resulted as follows:

Year	Total Receipts	Total Expenditures.
1916	\$10,858 38	\$9,343 05
1917	13,972 15	12,604 44
1918	16,742 43	15,467 44
1919	27,935 60	22,768 94
Totals,	\$69,508 56	\$60,083 87

The average net receipts therefore have been \$2,356, which is not sufficient to pay interest upon the investment and depreciation upon the equipment.

The Scenic Tunnel at Table Rock was opened again on August 1st after being closed to the public during the war. The receipts from this point were \$11,941.37 and the expenses \$9,979.10. Heavy expenditures were necessary to prepare the elevator and tunnel for tourist travel.

The maintenance payment of \$210.08 from the Niagara River Boulevard was for work performed under agreement, and the payment of \$6,000 from the Hydro-Electric Power Commission was in settlement of damage to Park roads.

The amount expended upon improvement or capital account was \$148,044.46 and upon ordinary maintenance \$130,105.62, to which must be added debentures interest of \$31,550.17.

All of which is respectfully submitted.

P. W. ELLIS (Chairman).
 GEORGE H. WILKES.
 L. C. RAYMOND.
 W. L. DORAN.
 L. H. CLARKE.
 J. D. CHAPLIN.
 H. Y. GRANT.

Niagara Falls, Ontario, March 1st, 1920.

FINANCIAL STATEMENT, 1919.

RECEIPTS.

Balance in Imperial Bank, January 1, 1919.....	\$135,838 24
Ontario Power Company, balance rental 1918	\$15,000 00
Ontario Power Company, rental 1919.....	30,000 00
Ontario Power Company, balance additional rental 1918	35,822 75
Ontario Power Company, additional rental 1919	67,863 25
Canadian Niagara Power Company, rental	15,000 00
Canadian Niagara Power Company, additional rental	52,500 00
Electrical Development Company, rental 1919	15,000 00
Electrical Development Company, balance additional rental 1918	32,500 00
Electrical Development Company, additional rental, 1919	53,998 00
International Railway Company, balance rental 1918	2,500 00
International Railway Company, rental 1919	10,000 00

Niagara Spanish Aero-car Company, rental arrears 1917 & 1918..	\$3,000 00	
Niagara Spanish Aero-car Company, rental 1919.....	2,000 00	
T. W. Midforth, Queenston Heights rental	700 00	
T. W. Midforth, additional rental	743 03	
Maid of the Mist Steamboat Company, rental	1,000 00	
The Refectory, total receipts	27,935 60	
Table Rock House, total receipts	11,941 37	
Lundy's Lane, burial fees	277 00	
Brock's Monument, tolls	2,551 65	
Fort Erie Garden, balance for potatoes	182 62	
Niagara River Boulevard, maintenance payment	210 08	
Hydro-Electric Power Commission, payment re roads	6,000 00	
Interest on deposits	6,309 80	
Miscellaneous	1,995 09	
		<u>395,030 24</u>
		\$530,868 48
Balance in Current Account	\$1,000 00	

DISBURSEMENTS,

CAPITAL ACCOUNT.

Queen Victoria Park		\$18,396 33
Brick Paving Extension	\$9 00	
Improvements, Dufferin Island	26 25	
Table Rock House, Equipment	9,556 52	
Park Equipment	5,312 76	
Equipment for Restaurant	1,054 56	
Office Equipment	634 45	
Improvements, Administration Building.....	1,217 65	
Lower Fountain Improvements	38 16	
Trees and Shrubs	50 50	
New Paintshop	158 53	
Workshop Lights	337 95	
		<u>1,686 92</u>
Butler's Burying Ground		1,686 92
Restoration of Grounds	\$1,686 92	
		<u>420 83</u>
Queenston		420 83
General Improvements	\$420 83	
		<u>1,432 93</u>
Niagara Glen		1,432 93
General Improvements	\$1,432 93	
		<u>29 52</u>
Chain Reserve		29 52
Fencing	\$29 52	
		<u>5,716 83</u>
Niagara River Boulevard		5,716 83
Welland River Bridge, Chippawa	\$5,000 00	
Lands and Buildings	58	
Grading, Drainage and Planting	499 15	
Rip-rap Protection	217 10	
		<u>576 16</u>
Whirlpool		576 16
General Improvements	\$576 16	
Legal Expenses	9,531 43	
Sinking Fund	9,000 00	
Expert Advice	1,600 51	
Purchase of Land from Hydro-Electric Power Commission	99,653 00	
		<u>\$148,044 46</u>

DISBURSEMENTS.
MAINTENANCE ACCOUNT.

Administration Expenses		\$21,686 33
Office Salaries	\$18,968 44	
Office Supplies	911 25	
Office Expense	963 98	
Travelling Expense	634 21	
Commissioners' Expense	208 45	
Entertainment		1,046 56
Special Account	\$1,046 56	
Guards and Caretakers		14,046 17
Queen Victoria Park	\$8,248 54	
Queenston	1,611 74	
Niagara Glen	1,324 78	
Chain Reserve	350 90	
Lundy's Lane	851 57	
Niagara River Boulevard	695 64	
Fort Erie	963 00	
Upkeep		93,326 56
Queen Victoria Park	\$60,095 42	
Queenston	4,612 71	
Niagara Glen	2,281 20	
Whirlpool	716 18	
Lundy's Lane	1,605 64	
Niagara River Boulevard	21,921 63	
Fort Erie	737 68	
Chain Reserve	1,356 10	
Table Rock House		9,979 10
Elevator and Tunnel	\$5,369 76	
Stock	1,281 95	
Wages	3,250 85	
Furniture	76 54	
The Refectory		22,768 94
Supplies, including kitchen	\$13,583 41	
General Expense	3,953 45	
Wages	5,232 08	
Interest on Debentures		31,550 17
Maintenance Account		194,403 83
Capital Account		148,044 46
Balance 31st December, 1919		188,420 19
		<u>\$530,868 48</u>

SPECIAL SAVINGS ACCOUNT, 1903-1919:

For Maintaining Water Levels at Intake of Canadian Niagara Power Company and International Railway Company.				
1905—January 31st, deposited	\$25,000 00			
1905—December 30th, interest to date	2,288 41			
		\$27,288 41		
Less cost submerged weir		2,189 32		
		\$25,099 09		
1919—December 31st, interest to date		12 974 82		
		<u>\$38,073 91</u>		

STATEMENT OF DEBENTURE INDEBTEDNESS, AS AT DECEMBER 31, 1919.

	Authorized.	Outstanding.	Interest Rate.	Date of Maturity.
Issue of 1887	\$525,000 00	\$525,000 00	4%	July 2, 1927
Issue of 1894	75,000 00	75,000 00	4%	July 2, 1927
Issue of 1908	100,000 00	100,000 00	3½%	July 2, 1927
Issue of 1909	200,000 00	135,000 00	4%	July 2, 1927

THE REPORT OF THE PARK SUPERINTENDENT.

To the Commissioners for the Queen Victoria Niagara Falls Park:

GENTLEMEN,—I submit herewith my Twelfth Annual Report for the year ended December 31st, 1919, comprising a description of the works necessary to maintain and expand the Queen Victoria Niagara Falls Park System.

GENERAL.

Notwithstanding the abnormal conditions to be faced after five years of war affecting the whole world, much progress was made during the season of 1919 particularly in the upkeep of the roads and Park areas where the labor for maintenance was almost impossible to obtain during the latter years of the great struggle. Had it not been for the rigid policy of keeping a small force of the best help obtainable, it would have been impossible to return to peace-time conditions with such expedition, and much larger sums of money would have been needed to repair roads not fully cared for, according to our statement of maintenance during the last several years. The increased cost of maintenance, therefore, may be attributed almost entirely to the rising scale of labour and material values which have been ascending steadily since 1916, as shown by our records. The outlook for 1920 is that prices will further advance before the peak is reached. On the other hand, the revenue for the purpose of maintaining the parks and boulevards is reaching its ultimate limit from present sources, and in the not-distant future the whole of the yearly receipts will be insufficient to pay for upkeep alone. Improvement of the Park System, therefore, will cause some anxiety unless additional sources of revenue can be discovered and made use of. The restaurant service has been looked upon as a possible producer of further revenue, and some consideration has been given to the extension of this branch of the Park activities, both in enlarging the various quarters now operated and in establishing new buildings at suitable locations along the frontier Park System. It is evident from the last few years' operation of the Refectory in Queen Victoria Park that a good service can be given under the direction of the Park Commissioners, and the year 1919 indicates that progress is being made toward making it profitable, although not unduly so. Any profits realized are used for the benefit and improvement of the service and premises and not for dividends to stock owners, but it remains to be seen whether the popular demand for service at cost will permit the Commissioners using this method of augmenting their income. And yet it would be a very reasonable way to provide additional receipts that would not be felt by the public at large or the individual tourist. If a superior service can be given at a price that is not out of proportion to similiar accommodation under private management, it seems quite reasonable that any profits resulting should not be objected to when they are expended to make the public more comfortable, and to supply enlarged areas, better roads, new facilities and more beautiful surroundings. The benefits to be secured far more than outweigh the small additional charge over the actual cost of service and would not be a burden to anyone.

QUEEN VICTORIA PARK.

The original restaurant in the Park, known as the Dufferin Cafe, was located in the vicinity of the Administration Building, but fronted on the tracks of the International Railway. This building was razed in 1903 to permit the construc-



Ruins—old Fort Erie.

tion of the first eighteen-foot conduit of the Ontario Power Company, and a new Shelter and Refectory was built at the foot of the escarpment bordering the Park. Thus located, a large space intervened between the front of the restaurant building and the railway tracks, and the paths and entrances did not lend to the free use of the building by the public. Advantage was taken of the disturbed condition created by the construction of the third (and last) conduit by the Ontario Power Company, to redesign the space between the main road and the building. One main path was run to the entrance steps which were located to face easterly instead of southerly. Two auxiliary paths come from points equidistant northerly and southerly from the axis of the main path, both leading to the front entrance. The flower beds in the lawn area were all made to conform to the new design, and the whole front will be opened up in a manner to attract visitors to the balcony, rather than to give the appearance of private quarters. The work, when completed, will, it is expected, attract more tourists to the Refectory, and the restaurant will be enabled to serve more meals than usual under the same conditions. The beds will be planted with low-growing shrubbery. At the same time the service road to the supply entrance, and the road leading to the main drive at the south of the Refectory, were re-designed to eliminate the sharp curves, and the grades were reduced. A new path with steps was constructed along the south side of the building to connect the front and rear areas.

A new cage for the cashier at the self-serve counter upon the ground floor was built to fit into one of the main front doors. This was all done by our own staff according to designs prepared in the office, and it presents a good appearance. It is protected in winter by a movable envelope placed on the exterior.

When the southerly portion of the Park was barricaded against public travel in September, 1916, to protect the immense power plants from enemy plots, the Table Rock House and Scenic Tunnel were closed and the lease terminated. The war ended and the barbed wire obstructions removed, it was decided to again open up this interesting viewpoint to tourists and to operate it under the direct control of the Park Commissioners. The Table Rock House was used by the Welland Canal Guard for part of the war period, and suffered considerably during the winter of 1918-1919. The building was rented to the Ontario Power Company to house part of its construction force occupied with building No. 3 Pipe Line. A large amount of repair work was therefore necessary to restore the premises for commercial work. The elevator and tunnel, too, on account of lying idle for two years, required considerable repairs to provide for safety.

In removing the military barricade it was expected that some considerable money would be realized from salvage, but it was impossible to interest anyone in the barbed wire and 2-inch x 4-inch scantling of which it was constructed. Finally, instead of proving an asset, it required further expenditure to restore the Park. The lumber was the only portion of value, the barbed wire having to be cut into small pieces.

The new paint shop was completed and provides for our doing some additional work heretofore contracted for.

General repairs and painting were carried on at the service buildings, Ramblers Rest Shelter, Inspiration Point Shelter, the Greenhouse and the Gardener's dwelling.

A stand to accommodate 200 people was built for the public reception to H.R.H. the Prince of Wales.

The Main Drive from the Mowat Gate to the Burning Spring Hill was severely damaged by the use of heavy trucks for the Ontario Power Company con-

struction work, and required extensive repairs and partial reconstruction. The surface was sprayed with tar and covered with fine gravel to shed the water and prevent the road metal from ravelling.

A short road connection from the Main Park Drive was built by the Ontario Power Company to the Gate House to provide for heavy loads.

The Canadian Niagara Power Company obtained permission for, and built, a brick road twenty feet wide from the south end of the power house to the Main Drive to give access for vehicular traffic. Landing platforms were included at the street railway tracks for foot passengers.

The coal shortage made it necessary to use wood for fuel whenever possible. Dead trees were cut and a great deal of debris in various parts of the ground used at the greenhouses in the less severe portions of the winter.

During the late fall and winter months, tree pruning was carried on to the full extent of our capacity. Tops were lightened, weak limbs were tied in by chains and bolts, and decayed spots were carefully cleaned out and filled with cement.

The kitchen garden was again maintained to supply fresh vegetables for the restaurant service. After charging up the supplies at current prices, a slight loss resulted from its operation.

The Hydro-Electric Power Commission again had the use of the Dufferin Islands channel for the purpose of conducting experiments relative to the intake works of the Chippawa-Queenston Hydro-Electric development. A model of the type of intake proposed for the entrance to the canal at Chippawa was constructed upon a small scale and observations of velocity and general behaviour under various conditions were carried on. As a result of this work, the design for the entrance structure will be decided upon. The use of the channel prevented the bathing pool from being used during the summer months, except in a very limited way.

The Ontario Power Company obtained permission, under the agreement of March 1, 1918, to construct the third pipe line, 13½ feet in diameter from the gate house at Dufferin Islands to the Power House and to leave the major portion in an open trench until March 1st, 1923. Under previous agreements, surplus excavation had to be disposed of according to the direction of the Commissioners, and a large yardage was placed by the company around the Dufferin Islands channel, making a new shore-line of less formal appearance than the one constructed in 1903-1904.

Restoration work was carried on at the gate house and between Table Rock and the Power House. No. 3 Surge Tank was completed and the earth embankment placed around it. The temporary dumps still have to be trimmed and planted and the disturbed surface from Table Rock to the Electrical Development Company restored.

RIVER ROAD.

The River Road in the City of Niagara Falls, from Ferry Road to North Street, the northerly city boundary, is upon the Chain Reserve, vested in the Commissioners, and at various points additional widths have been purchased by the Park to accommodate traffic conditions. When the new Clifton Hotel was built in 1905, a considerable extra width was purchased to widen out the main approach to the Park proper. By agreement of March 25, 1895, the maintenance of the River Road is provided for by the Commissioners and the City of Niagara Falls jointly. The macadam road surface required an annual expenditure to maintain it for



Ontario Power Company. Restoration of No. 3 Pipe Line.

traffic, and the increased travel made it very difficult to keep this class of road up to standard, even with a bituminous carpet. Arrangements were therefore made with the city to construct a high-class asphalt roadway along the whole length, from the Park to North Street, and the work was completed during the season and adds much to the appearance of the city frontage.

QUEENSTON.

The interior of the shaft of Brock's Monument was washed with a coating of white cement to lighten up the stairway for the large number of tourists who wish the climb its heights for the view. The picnic tables were repaired and painted during the winter and a number of new rustic seats constructed. A number of new trees were planted to replace dead ones removed, and general pruning of the trees upon the upper plateau was carried on. The steep road to Queenston Village was repaired and the drainage improved.

NIAGARA GLEN.

The southerly path skirting the Niagara River was built up to a higher elevation, and for this purpose overhanging rock was blasted away to a new face. The older steps were repaired and the pathway system generally improved. Some wood was cut for fuel but only among the dead trees. The usual supply of stakes was made during the winter months.

BUTLER'S BURYING GROUND.

In 1907 the Commissioners were authorized to acquire the family burying plot of Colonel John Butler, famous in early days as the leader of Butler's Rangers. This sacred spot on the outskirts of Niagara-on-the-Lake was purchased, together with a roadway leading to it, but beyond fencing the area no other work was performed until 1919. Active work in reclaiming it was begun and a design for the grounds was prepared. The old burial vault was reconstructed and an entrance on the grade of the floor cut through the side hill. The floor was cemented, the walls and roof restored and an ornamental iron door placed at the entrance. Pathways were laid out and the ancient tombstones, some over 100 years old, were gathered together for repairs. Many of the stones were broken and some parts lost altogether. The fence was rebuilt and preparations made for planting trees and shrubs. An old spring was led to a gathering basin and gives water in abundance for all the needs of the place. Much of historical interest centres about old Niagara, the first capital of Upper Canada, and this old resting-place of brave men and women of a century ago will be visited by many a tourist seeking records of our land as found along the Niagara Frontier.

WHIRLPOOL POINT.

The terminal of the aerial tramway across the whirlpool at Thompson's Point has been parked and planted. The overhanging rock along the edge of the cliff was blasted away and the heavy iron pipe protecting rail moved to make the look-out pathway secure.

NIAGARA RIVER BOULEVARD.

The road from Chippawa southerly for $2\frac{1}{2}$ miles was sprayed with tar, and patching of the road surface was carried on during the season over the remainder of the road to Fort Erie. During the dry summer weather the newly-planted trees and shrubs required watering, this operation being provided for by portable gasoline pumps along the edge of the Niagara River. The plantings of shrubs were cultivated in large beds instead of separately for the purpose of economy in upkeep and to create a more consolidated effect.

The grass cuttings were stacked to be used later for mulching, but the time is approaching when more frequent cutting of the grass areas will make it unnecessary to gather the clippings. A small number of new trees were planted and the dead ones of former plantings replaced.

HYDRO-ELECTRIC POWER COMMISSION.

The construction work upon the Chippawa-Queenston Canal made it necessary to supervise many operations that extended to Park lands. The International Railway track at Smeaton's Ravine required protecting across the front of the forebay. The main bridge over the Welland River in the Village of Chippawa was removed and a temporary bridge constructed to take the traffic until the new one is built. The Power House excavation was started on the talus and a great part of the material used to fill in low land at Queenston. The construction railway from the Power House to Queenston was completed. A temporary power line was constructed from the forebay to Queenston, located upon the Chain Reserve and down the talus.

Sanitary arrangements for the forebay camp were built upon the talus north of the Power House.

Respectfully submitted,

JOHN H. JACKSON,

Superintendent.

Niagara Falls, Ont.

March 15, 1920.

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H. C. D. THE ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO
AND THE COMMISSIONERS FOR THE QUEEN VICTORIA NIAGARA
FALLS PARK

V.

THE ELECTRICAL DEVELOPMENT CO., LTD., AND THE TORONTO
POWER CO., LTD.

Copy of Judgment of Middleton, J., delivered February 28th, 1919.

KILMER, K.C. and ROBINSON for the Plaintiffs.

SCOTT, K.C., MCCARTHY, K.C., ANGLIN, K.C., for the Defendants.

Toronto Non-Jury, 30th and 31st October, 1st November, 1918.

This action arises upon an agreement bearing date 29th day of January, 1903, between the Commissioners of the Queen Victoria Niagara Falls Park, and William Mackenzie *et al*, designated in the agreement as "The Syndicate."

By an Act of The Province 62 Vic., Chap. 11, the Commissioners, with the approval of the Government, are empowered to enter into an agreement with any person, or company, to take water from the Niagara River, within the limits of the Park, for the purpose of enabling such person, or company, to generate electricity, pneumatic, hydraulic or other power in such manner, and for such rental, and upon such terms and conditions as may be embodied in the agreement.

Pursuant to this power, by the agreement in question, the Commissioners granted to the Syndicate "For the purpose of generating electricity, and pneumatic, or any other power to be transmitted, and capable of being transmitted to places beyond the Park." "A license, irrevocable, to take from the waters of the Niagara River, within the Park, a sufficient quantity of water to develop one hundred and twenty-five thousand electrical or pneumatic or other horse-power for commercial use."

By Clause fourteen of the agreement, a Clause which requires to be fully considered, the license was granted for a term of fifty years from the first day of February, 1903, with certain rights of renewal, the Syndicate paying therefor a clear yearly rental of \$15,000, and in addition a further sum to be paid "for each electrical horse-power generated and used and sold or disposed of over ten thousand electrical horse-power."

By Clause twenty-five it is provided that the Syndicate shall not amalgamate with any other company nor shall it enter into any arrangement or agreement which may directly or indirectly have that effect.

By the interpretation of Clause "C" the expression "The Syndicate" is to be understood to mean not only the named individuals, but also their, and each of their, heirs, executors, administrators, and assigns, and by Clause twenty-seven The Syndicate agrees that within two years from the date of the agreement they will sell, assign, convey, and transfer to a company formed, or to be formed, having powers to construct and operate the works in question all the rights and franchises conferred upon The Syndicate.

The agreement describes the works to be constructed by the Syndicate as consisting of a gathering dam to be erected in the bed of the river, a power house to be constructed in the bed of the river to be excavated to a depth which would allow the waters of the river to be conducted through the penstock and the turbines

to be erected and thence by a tailrace, and to be discharged under the main falls of the river. A transformer house was also to be erected at some distance from the bank of the river. These works are described to be "for the generation of one hundred and twenty-five thousand electrical horse-power," and "to permit the Syndicate to take sufficient water at the lowest stage of the river for the generation of one hundred and twenty-five thousand electrical horse-power in the power house of the company."

The Syndicate assigned its rights under the agreement to the Electrical Development Company on the 25th March, 1903, and the agreement and assignment were confirmed by an Act of the Province, 5 Edw. VII, Chap. 12.

The plaintiffs claim in this action first; arrears of rental which are due upon their construction of Clause fourteen of the agreement; second, damages by reason of the taking of more water than is authorized by the grant according to the plaintiffs' interpretation of the agreement; thirdly, an injunction restraining the defendants from taking water in excess of the grant; fourth, a declaration that the agreement between the Electrical Development Company, and the Toronto Power Company is within the prohibition of Clause twenty-five of the agreement, and for consequential relief.

The defendants, the Electrical Development Company, counterclaims asking a declaration of its rights as to the use of the water under the grant and also a declaration that the power plant as constructed is such as it was entitled to construct and use under the agreement. In the defence to the counterclaim the plaintiffs state that the plant by reason of inefficient construction and design takes from the river a greater quantity of water than is sufficient to develop the quantity of electrical power fixed by the agreement but no claim is based upon the allegation.

It is convenient to deal first with the effect of the transaction between the defendants alleged to constitute "an amalgamation" or "to have the effect of" an amalgamation contrary to the provisions of Clause twenty-five.

On the 16th of April, 1908, an agreement was entered into between the Electrical Development, and The Toronto and Niagara Power Company, a transmission company, and its co-defendants The Toronto Power Company, Ltd., by which the undertakings of the Electrical Development Company, and of the transmission company are let, demised, and leased to the Power Company from the date of the agreement until the first day of March, 2013, this term exceeding by one month the duration of the license granted including its renewal terms. In consideration of this the Power Company agrees to assume and pay the rental due the Commissioners, and to pay all accruing payments due upon debentures issued by the lessors, and if the earnings permit a sum which will enable the Electrical Development Company to pay dividends upon its preferential stock.

This in my view is not an amalgamation of the defendant companies nor has it the effect of an amalgamation. It is at most an assignment of the license, a thing that is not prohibited, but is contemplated by the agreement. Adapting the words of Mr. Justice Buckley in *re South African Supply and Cold Storage Co.* (1904), 2 Ch. 268, the word "amalgamation" has not any definite legal meaning. It is a commercial, and not a legal term, and even as a commercial term it bears no exact definite meaning. In each case one has to decide whether the transaction is such that in the meaning of commercial men it is one which is comprehended by the term "amalgamation." To constitute an amalgamation there must be a blending substantially of two or more existing concerns. Here there was, at most, a leasing of the undertaking or an assignment of the license, and nothing that in

either form or substance amounts to amalgamation. *Toronto vs. Toronto Electric Light Co.*, 10 O.L.R., 621.

Turning to the other and more difficult questions raised. In the first place expert evidence was tendered with a view of aiding me in rightly interpreting the contract. I do not think that that evidence is properly admissible. In my view the construction of the contract depends upon its own terms, and must be arrived at without the aid of any oral testimony, expert or otherwise. This expert evidence was mainly directed to the attributing of some particular significance to the words "for commercial use" occurring in the grant.

I allowed the evidence to be given subject to objection lest any appellate tribunal should think it properly admissible.

Evidence which is in my view properly admissible establishes that in the generation of electrical energy some portion of the energy is consumed in the act of production, and never becomes available for sale, this included "excitation loss," and "transformer loss." In the case of the Attorney-General for Ontario *vs. Canadian Niagara Power Co.*, 2 D.L.R. 425, it was determined that under the contract there considered payment must be made for the entire horse-power actually generated without any allowance for such losses. That contract did not contain the words here used "for commercial use." The effect of the introduction of these words is to entitle the licensee to generate not merely one hundred and twenty-five thousand horse-power, but one hundred and twenty-five thousand horse-power "for commercial use"; that is to say, that the measurement of the power is to be made at a point where the electrical energy can be delivered for commercial use. This excludes from computation all electricity used by the company itself in the production of the energy available for sale including excitation and transformer losses.

A far more important question is the meaning to be attached to the limitation of the license by which the defendant may "take from the waters of the Niagara River a sufficient quantity of water to develop one hundred and twenty-five thousand electrical pneumatic or other horse-power for commercial use."

The plaintiffs contend that this indicates a limit beyond which the defendant is not authorized to go. According to their view it is the extreme amount of water which may be taken at any one time. The defendant, on the other hand, contend that the expression "for commercial use" indicates that the limit is not one to be strictly adhered to, that they may take one hundred and twenty-five thousand horse-power on the average or at least with what they call "a swing" of twenty per cent.; that is to say, they are not to be deemed to exceed the privilege granted if they do not take at any one time more than twenty per cent. in excess of one hundred and twenty-five thousand horse-power provided that at some other time they take twenty per cent. less than one hundred and twenty-five thousand horse-power, so that the average does not exceed this amount. The mere statement of this proposition as being something that was intended by the agreement appears to me to demonstrate the fallacy of the argument. If this had been the intention of the parties it certainly could have been expressed in more felicitous language.

The water flowing over the falls in the Niagara River is not unlimited in quantity. The amount that may be used for the production of electricity is limited by agreement between Canada and the United States. When the right to use a portion of the water available for use on the Canadian side was being granted by the Province the determination of the utmost that might be taken by the licensee was manifestly a matter of great importance. The licensee might not at all times use the full amount that he was entitled to take, but the fixing of an amount beyond which he should not at any time go was essential for the purpose of

determining of the amount of power that might be developed by subsequent grantees. If the grantee of the right to take one hundred and twenty-five thousand could close down his works for twelve hours, and operate them for another twelve hours, taking two hundred and fifty thousand horse-power, or could operate them for six hours taking five hundred thousand horse-power, it is easy to see that complications and confusion might arise. To meet this obvious difficulty the defendants seek to introduce, based on opinions of experts, a limitation not found in the contract, and suggest that there should be read into the grant the words "upon the average provided the swing does not exceed twenty per cent." This is said to be the effect of the words "for commercial use."

The true meaning of the words "for commercial use" is, as I have already said, to be found in excluding from the computation all energy used by the company itself in the manufacture of saleable electricity.

Turning now to Clause fourteen. This clause resembles closely the clause considered and dealt with by the Privy Council in the case already referred to, *Attorney-General vs. Canadian Niagara Power Co.* (1912), A.C. 825. The only difference, singularly enough, is in the one sentence upon which stress is laid in the judgment. The additional rental in the case there considered was to be paid "for and from" the development of the higher power. This covenant while otherwise precisely the same omits the words "and from" and it is argued that this enables the two covenants to be distinguished.

The plaintiffs contend, as was contended in the case referred to, that the true meaning of the clause is that the rental is to be calculated by reference to the highest quantity of power generated and disposed of. That is, that when the quantity generated and disposed of by the company reaches any given number of electrical horse-power the rental to be paid to the commissioners is to be calculated by reference to it. The contention of the defendants, on the other hand, is that the quantity of the rental is not to be determined on the peak attained but by the amount actually used which can be easily determined by an integrating watt-hour meter recording the consumption or by averaging the peaks. In dealing with the case before the Privy Council their Lordships say "the case is not susceptible of much argument. It rather lends itself to minute criticism which would be out of place in this judgment."

On the whole, not without some doubt and hesitation, their Lordships have come to the conclusion that the view of the appellants is to be preferred mainly on the ground that there are some expressions which it seems impossible to reconcile with the contention of the respondents, as, for instance, the direction that increased rental is to be payable not simply "for"—a word that has already been criticised—but "from" the development of the higher power.

I am not able to say that the words "and from" are the controlling factor in the judgment of their Lordships. There are other expressions which it is equally impossible to reconcile with the contention of the respondents, and it is to be noted that the expression referred to does not occur in the portion of the clause which provides for the payment of the additional rental, but in that portion of the clause which fixes the date for payment, and it is, therefore, of less moment than the exact words of the rental clause itself.

For these reasons I think I ought to construe this clause as having the same meaning as attributed to the clause in question in the case referred to. This view is, I think, in accord with the opinion of the Supreme Court in *Montreal vs. Montreal L.H. & P. Co.*, 42 S.C.R. 431.

On the question as to what payment should be made for water taken for the purpose of generating electricity over and above the amount limited by the contract there is room for wide difference of opinion. I have come to the conclusion that this should be paid for at a rate not wholly different from that stipulated for by the contract for electricity generated between thirty thousand electrical horse-power, and the maximum, i.e., fifty cents for each horse-power generated, used and disposed of. I do not think that this should be upon a cumulative peak basis, but that the payment should be made at the rate indicated for the highest point of excess during each half year.

No case has been cited which at all indicates the principle upon which damage should be assessed in a case of this kind. What I have suggested is, I think, fair because the plaintiffs have not shown any special damages resulting from the use made of that water which would otherwise have gone idly by the property. On the other hand the defendants cannot complain if they are called upon to pay for that which they have taken without authority a price somewhat in excess of what they have, under the contract, to pay for that which they have authority to take. I have fixed the price of fifty cents semi-annually, and not annually to offset in some degree the fact that it is not payable beyond the half year.

The defendants have, in my view, exceeded the amount of water which they are authorized to take under the agreement, and there should, I think, be an injunction to restrain them from any further breach of contract. It is said that under the War Measures Act an order has been made by the Power Controller compelling the production, by the defendants to the limit of their capacity irrespective of their contract rights. The injunction I grant will be subject to the terms of any order made under the authority of that Act.

The defendants ask that I should make a declaration that the plant and machinery which they have established is such as they are entitled to maintain under the terms of the contract. I have no doubt upon the evidence that the plant was erected in accordance with the provisions of the agreement and was in accordance with the best obtainable expert opinion at the time it was erected.

Evidence was given going to show that the plant was not sufficient having regard to the advance made in this branch of engineering during the last few years. The evidence pro and con on this subject is exceedingly unsatisfactory and quite insufficient for a satisfactory determination of this issue. I do not think that this issue is one upon which I am called to pronounce any opinion, and I make no declaration upon the subject either one way or the other, leaving the matter entirely open to be raised in further litigation, but the limit which I fix beyond which the defendants may not go in taking water from the river is to be determined by the amount necessary for the production of one hundred and twenty-five thousand electrical horse-power by the machinery installed and maintained in a state of reasonable efficiency. The agreement does not contemplate any change in the system as the standard of efficiency advances.

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